

SENATE BILL No. 373

DIGEST OF INTRODUCED BILL

Citations Affected: IC 11-12-11; IC 27-10-2; IC 35-33.

Synopsis: Bail and bail procedures. Provides that a court may admit a defendant to bail by establishing the bail amount and requiring the defendant to execute a bail bond by selecting one of the following options: (1) Executing a cash bond by depositing cash or securities or by making a payment by credit card in an amount that equals 100% of the bail amount. (2) Executing a surety bond executed by a bail agent representing a sufficient solvent surety insurance company authorized to underwrite bail bonds in Indiana and the county where approved in an amount equal to the bail amount. (3) Executing a deposit bond by depositing at least 10% of the amount of the bail with a sufficient insurer who has been a resident of the state and county where the bond is executed for at least one year, and has affirmed that the insurer has unencumbered assets equal to the bail amount. (4) Executing a real estate bond secured by real estate in the county where the bond will be executed, if 33% of the true tax value minus encumbrances is at least equal to the amount of the bail. Provides that: (1) the court shall inform the defendant, or a person making a deposit on behalf of the defendant, that the defendant or the person may enter into an agreement to allow the court to retain all or a part of the bail to pay publicly paid costs of representation and fines, costs, fees, and restitution that the court may order the defendant to pay if the defendant is convicted; and (2) if the defendant or person making a deposit on behalf of the person chooses to enter into the agreement, the court shall require the defendant and each person who makes the deposit on behalf of the defendant to execute the agreement. Repeals and replaces the law concerning forms used in recognizances for the appearance of prisoners. Repeals and
(Continued next page)

Effective: July 1, 2014.

Taylor

January 14, 2014, read first time and referred to Committee on Judiciary.



Digest Continued

replaces the law concerning late surrender fees. Provides that late surrender fees shall be distributed as follows: (1) 50% of the late surrender fees shall be deposited in the police pension trust fund. (2) 10% of the late surrender fees shall be deposited in the county extradition and sheriff's assistance fund. (3) 20% of the late surrender fees shall be retained by the court in which the bond was posted to defray the costs of operating the court or defray the costs of operating diversion programs. (4) Seven and one-half percent of the late surrender fees shall be deposited in the county public defender fund. (5) Seven and one-half percent of the late surrender fees shall be deposited in the clerk of the court operating account to offset operating expenses. (6) Five percent of the late surrender fees shall be deposited in the county electronic monitoring fund in the county in which the bond was posted to defray the costs of operating electronic monitoring programs that involve indigent offenders. Establishes the county electronic monitoring fund (fund) in each county consisting of late surrender fees under the bail law. Provides that the fund shall be used: (1) to defray the costs incurred by a county to operate electronic monitoring programs that involve indigent offenders; or (2) if a county does not operate an electronic monitoring program, to defray the costs incurred by a county in providing court appointed public defenders to indigent defendants. Makes conforming amendments.



Second Regular Session 118th General Assembly (2014)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

SENATE BILL No. 373

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 11-12-11 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2014]:

4 **Chapter 11. County Electronic Monitoring Fund**

5 **Sec. 1. As used in this chapter, "fund" refers to a county**
6 **electronic monitoring fund established by section 2 of this chapter.**

7 **Sec. 2. There is established in each county a county electronic**
8 **monitoring fund.**

9 **Sec. 3. (a) Except as provided in subsection (b), the fund shall be**
10 **used:**

11 **(1) to defray the costs incurred by a county to operate**
12 **electronic monitoring programs that involve indigent**
13 **offenders; or**

14 **(2) if a county does not operate an electronic monitoring**
15 **program, to defray the costs incurred by a county in**
16 **providing court appointed public defenders to indigent**



defendants.

(b) A county may withdraw money in the fund one (1) time if money in the fund is equal to an amount that is at least two (2) times the amount of the initial costs incurred by the county to begin operating a county electronic monitoring program. Money withdrawn from the fund must be used to compensate the county for the initial costs incurred by the county to begin operating the program.

Sec. 4. The fund shall be administered by the county auditor.

Sec. 5. The fund consists of late surrender fees deposited in the fund under IC 35-33-8-7(i)(6).

Sec. 6. The expenses of administering the fund shall be paid from money in the fund.

Sec. 7. Money in the county electronic monitoring fund at the end of a particular calendar year does not revert to any other fund but remains in the county electronic monitoring fund.

SECTION 2. IC 27-10-2-3, AS AMENDED BY P.L.105-2010, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 3. (a) An undertaking is valid if it states:

- (1) the court where the defendant is to appear;
- (2) the amount of the bail; and
- (3) that it was made before an official legally authorized to take the bond.

(b) A surety remains liable on an undertaking despite:

- (1) any lack of the surety's qualifications as required by section 4 of this chapter;
- (2) any other agreement that is expressed in the undertaking;
- (3) any failure of the defendant to join in the undertaking; or
- (4) any other defect of form or record, or any other irregularity, except as to matters covered by subsection (a).

(c) Any undertaking written after August 31, 1985, shall expire thirty-six (36) months after it is posted for the release of a defendant from custody. This section does not apply to cases in which a bond has been declared to be forfeited and the surety and bail agent have been notified as described in ~~section 12 of this chapter.~~ **IC 35-33-8-7.**

SECTION 3. IC 27-10-2-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 4. Every **insurer or personal** surety **executing a bond** for the release of a person on bail shall be qualified as:

- (1) an insurer as defined and meeting the qualifications prescribed in IC 27-1-5-1, and represented by a bail agent as defined in and meeting the qualifications prescribed in this article; or



(2) a person who:

(A) has reached the age of eighteen (18) years;

(B) is a citizen of the United States;

(C) has been a bona fide resident of Indiana for at least one (1) year immediately preceding the execution of the bond;

(D) is related to the person for whom release on bail is sought within the third degree of affinity; and

~~(E)~~ **(D)** owns real or tangible personal property in Indiana with a net asset value that is acceptable to the proper authority approving the bond.

SECTION 4. IC 27-10-2-8, AS AMENDED BY P.L.105-2010, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 8. (a) The court shall give the bail agent, ~~or insurer, or any other person executing a bail bond under~~ **IC 35-33-8-3.2(a)(1)** legal written notice of the defendant's trial or hearing for purposes of entering a plea at least seventy-two (72) hours before the defendant's appearance is required unless the appearance is scheduled within seventy-two (72) hours from the execution of the bond.

(b) The defendant's failure to appear constitutes a breach of the undertaking. The court before which the cause is pending shall make a record of the breach at which time ~~section 12 of this chapter~~ **IC 35-33-8-7** then applies.

SECTION 5. IC 27-10-2-10 IS REPEALED [EFFECTIVE JULY 1, 2014]. Sec. 10: (a) Recognizances for the appearance of prisoners shall in all cases and in all courts be in writing; be taken with at least one (1) resident freehold surety or be secured by a surety company; and be substantially in the following form:

~~STATE OF INDIANA~~)

7) ~~SS:~~

COUNTY OF _____)

~~State of Indiana.~~

~~VS.~~

John Doe

We, A B and C D; jointly and severally acknowledge ourselves bound to the state of Indiana in _____ dollars. If A B (the prisoner) shall appear on the ____ day of _____, 20____, in the _____ court, to answer a charge of (here state the offense) and from day to day and from term to term thereof; and abide the order of the court until the cause is determined and not depart therefrom without leave; then this recognizance shall be void: else to remain in full force:

If the above named defendant does not appear at any time fixed in this



bond; the court shall order CD (the surety) to produce the defendant. The court shall mail notice of this order to CD; the surety at _____ and _____ in _____ county and state of Indiana. If the surety does not produce the defendant; and does not pay all costs and late surrender fees in compliance with IC 27-10-2-12; the court shall; three hundred sixty-five (365) days after the mailing of the above notice to the surety; declare the bond forfeited; enter judgment forthwith against the surety; and certify the judgment to the clerk for record. Such forfeiture shall be without pleadings and without change of judge or change of venue. The obligors on such bond may appeal to the ruling of the court and appeal to the court of appeals as in other civil cases; and on appeal the evidence may be reviewed. Execution shall issue forthwith to the sheriff against the properties of each of us to be levied as other executions are levied.

Witness our hand and seals this ____ day of _____, 20____.

A B _____ (SEAL)

C D _____ (SEAL)

taken and approved this ____ day of _____, 20____.

(Officer taking surety)

Affidavits shall be taken from each personal surety substantially as follows:

State of Indiana)

County of _____)

I, C D, being duly sworn; on oath say; that I am worth in my personal rights and name; over and above all debts and liabilities of any and every kind; not less than _____ dollars; and that I possess real estate in my own name; located in the above-named county; which is worth over and above all encumbrances and liens; more than _____ dollars; that I am surety on the following recognizance bonds and none other; aggregating the total amount of _____ to-wit: (Here name bonds and amounts; if any) _____. And that I am not surety on any recognizance bond of any kind in any court which bond has been forfeited which judgment remains unpaid:

C D _____ (SEAL)

Subscribed and sworn to before me, this ____ day of _____, 20____.

(Officer administering oath)

(b) Printed forms of the above bonds shall be kept by all clerks of court that are authorized by law to admit prisoners to bail and shall be supplied by the clerks to sheriffs.



- (c) For the purposes of this article, a cause is determined when a:
- (1) judgment of conviction or acquittal is entered for a misdemeanor;
 - (2) judgment is withheld in a misdemeanor case;
 - (3) judgment of acquittal is entered in a felony case;
 - (4) sentence is imposed in a felony case; or
 - (5) defendant has been ordered or admitted to a diversion program.

SECTION 6. IC 27-10-2-12 IS REPEALED [EFFECTIVE JULY 1, 2014]. Sec. 12. (a) Only if a defendant does not appear as provided in the bond:

- (1) the court shall:
 - (A) issue a warrant for the defendant's arrest; and
 - (B) order the bail agent and the surety to surrender the defendant to the court immediately;
- (2) the clerk shall, less than thirty (30) days after the defendant's failure to appear, mail notice of the order to both:
 - (A) the bail agent; and
 - (B) the surety;
- at each of the addresses indicated in the bonds; and
- (3) if the defendant later is arrested or otherwise appears:
 - (A) the court shall order that the surety be released from the bond; and
 - (B) after the court issues an order under clause (A); the surety's original undertaking shall be reinstated if the surety files a written request for the reinstatement of the undertaking with the court.

This subsection may not be construed to prevent a court from revoking or resetting bail.

(b) The bail agent or surety must:

- (1) produce the defendant; or
- (2) prove within three hundred sixty-five (365) days:
 - (A) that the appearance of the defendant was prevented:
 - (i) by the defendant's illness or death;
 - (ii) because the defendant was at the scheduled time of appearance or currently is in the custody of the United States, a state, or a political subdivision of the United States or a state;
 - (iii) because the required notice was not given; or
 - (iv) because authorities have refused to extradite the defendant, by a preponderance of the evidence; and
 - (B) the defendant's absence was not with the consent or connivance of the sureties.



(c) If the bail agent or surety does not comply with the terms of subsection (b) within one hundred twenty (120) days after the mailing of the notice required under subsection (a)(2); a late surrender fee shall be assessed against the bail agent or surety as follows:

(1) If compliance occurs more than one hundred twenty (120) days but not more than one hundred eighty (180) days after the mailing of notice; the late surrender fee is twenty percent (20%) of the face value of the bond.

(2) If compliance occurs more than one hundred eighty (180) days but not more than two hundred ten (210) days after the mailing of notice; the late surrender fee is thirty percent (30%) of the face value of the bond.

(3) If compliance occurs more than two hundred ten (210) days but not more than two hundred forty (240) days after the mailing of notice; the late surrender fee is fifty percent (50%) of the face value of the bond.

(4) If compliance occurs more than two hundred forty (240) days but not more than three hundred sixty-five (365) days after the mailing of notice; the late surrender fee is eighty percent (80%) of the face value of the bond.

(5) If the bail agent or surety does not comply with the terms of subsection (b) within three hundred sixty-five (365) days of the mailing of notice required under subsection (a)(2); the late surrender fee is eighty percent (80%) of the face value of the bond.

All late surrender fees are due as of the date of compliance with subsection (b) or three hundred sixty-five (365) days after the mailing of notice required under subsection (a)(2); whichever is earlier; and shall be paid by the surety when due. If the surety fails to pay; then the late surrender fees shall be paid by the commissioner as provided in subsection (f).

(d) If the bail agent or surety does not comply with the terms of subsection (b) within three hundred sixty-five (365) days of the mailing of notice required by subsection (a)(2); the court shall declare forfeited an amount equal to twenty percent (20%) of the face value of the bond. The court shall immediately enter judgment on the forfeiture; without pleadings and without change of judge or change of venue; and assess against the bail agent or surety all actual costs resulting from the defendant's failure to appear. These costs include jury fees; witness fees; and any other documented costs incurred by the court.

(e) Proceedings relative to the bond; forfeiture of a bond; judgment on the forfeiture; execution of judgment; or stay of proceedings shall



be in the court in which the bond was posted. Costs and late surrender fee assessed against a bail agent or surety under subsection (c) shall be satisfied without further order of the court as provided in subsection (f). The court may waive the late surrender fee or extend the period for payment beyond the statutorily permitted period; or both, if the following conditions are met:

(1) A written request is filed with the court and the prosecutor;

(2) The surety or bail agent provides evidence satisfactory to the court that diligent efforts were made to locate the defendant.

(f) In the case of an insurer, if the fees, costs, or judgment is not paid, then the clerk shall mail the notice to the commissioner. The commissioner shall:

(1) within ten (10) days of receipt of the notice forward a copy by certified mail to the insurer;

(2) forty-five (45) days after receipt of the notice from the clerk; if the commissioner has not been notified by the clerk that the fees or judgment or both have been paid; pay the late surrender fee assessment, costs, and any judgment of forfeiture ordered by the court from funds the insurer has on deposit with the department of insurance;

(3) upon paying the assessment, costs, and judgment, if any, from funds on deposit, immediately revoke the license of the insurer, if the satisfaction causes the deposit remaining to be less than the amount required by this article; and

(4) within ten (10) days after revoking a license, notify the insurer and the insurer's agents and the clerk of each county in Indiana of the revocation and the insurer shall be prohibited from conducting a bail bond business in Indiana until the deposit has been replenished.

(g) The notice mailed by the clerk to the commissioner pursuant to the terms of subsection (f) shall include:

(1) the date on which the defendant originally failed to appear as provided in the bond;

(2) the date of compliance with subsection (b), if compliance was achieved within three hundred sixty-five (365) days after the mailing of the notice required by subsection (a)(2);

(3) the amount of the bond;

(4) the dollar amount of the late surrender fee due;

(5) the amount of costs resulting from the defendant's failure to appear; and

(6) if applicable, the dollar amount of the judgment of forfeiture entered by the court.



(h) Any surety on a bond may appeal to the court of appeals as in other civil cases without moving for a new trial; and on the appeal the evidence, if any, shall be reviewed:

(i) Fifty percent (50%) of the late surrender fees collected under this chapter shall be deposited in the police pension trust fund established under IC 36-8-10-12 and the remaining fifty percent (50%) shall be deposited in the county extradition and sheriff's assistance fund established under IC 35-33-14.

SECTION 7. IC 27-10-2-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 13. All liability of the bail agent or surety may be enforced on motion without necessity of an independent action if conformance with:

(1) sections 1 through ~~12~~ 9 of this chapter;

(2) **section 11 of this chapter;**

(3) **IC 35-33-8-6.7; and**

(4) **IC 35-33-8-7;**

is shown.

SECTION 8. IC 35-33-8-0.1, AS ADDED BY P.L.220-2011, SECTION 585, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 0.1. The following amendments to this chapter apply as follows:

(1) The addition of section 8 of this chapter by P.L.36-1990 **(before its repeal)** does not apply to any bail deposit made under section 3(a)(1) of this chapter (before its repeal) or section 3.1(a)(1) of this chapter (before its repeal) that is made before March 20, 1990.

(2) The amendments made to section 3.1(d) of this chapter (before its repeal) by P.L.156-1994 apply only to the retention or collection of a fee for a bond executed or deposit made after March 11, 1994.

SECTION 9. IC 35-33-8-3.2, AS AMENDED BY P.L.35-2012, SECTION 107, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 3.2. (a) **Under Article 1, Section 17 of the Constitution of the State of Indiana**, a court may admit a defendant to bail **as follows by establishing the bail amount and requiring the defendant to execute a bail bond by selecting one (1) of the options listed in subdivision (1) and impose by imposing** any of the ~~following other~~ conditions **listed in subdivisions (2) through (8)** to assure the defendant's appearance at any stage of the legal proceedings, or, upon a showing of clear and convincing evidence that the defendant poses a risk of physical danger to another person or the community, to assure the public's physical safety:



- (+) Require the defendant to:
- (A) execute a bail bond with sufficient solvent sureties;
 - (B) deposit cash or securities in an amount equal to the bail;
 - (C) execute a bond secured by real estate in the county, where thirty-three hundredths (0.33) of the true tax value less encumbrances is at least equal to the amount of the bail;
 - (D) post a real estate bond; or
 - (E) perform any combination of the requirements described in clauses (A) through (D).

(1) If admitted to bail by a court, the defendant shall select one (1) of the following:

(A) Execute a cash bond:

(i) by depositing cash or securities; or

(ii) by making a cash payment by credit card;

in an amount that equals one hundred percent (100%) of the bail amount.

(B) Execute a surety bond executed by a bail agent representing a sufficient solvent surety insurance company authorized to underwrite bail bonds in:

(i) Indiana; and

(ii) the county where the bond will be executed;

in an amount equal to the bail amount.

(C) Execute a deposit bond by depositing at least ten percent (10%) of the amount of the bail with a sufficient insurer who has:

(i) been a resident of the state and the county where the bond will be executed for at least one (1) year; and

(ii) affirmed that the insurer has unencumbered assets equal to the bail amount.

(D) Execute a real estate bond secured by real estate in the county where the bond will be executed, if thirty-three percent (33%) of the true tax value of the real estate minus encumbrances is at least equal to the amount of the bail.

If the court requires the defendant to deposit cash or cash and another form of security as bail; The court shall inform the defendant, or a person making a deposit or payment on behalf of the defendant, that the defendant or the person may enter into an agreement to allow the court to retain all or a part of the bail to pay publicly paid costs of representation and fines, costs, fees, and restitution that the court may order the defendant to pay if the defendant is convicted. If the defendant or person making a deposit or payment on behalf



1 **of the defendant chooses to enter into the agreement**, the court
 2 **may shall** require the defendant and each person who makes the
 3 deposit on behalf of the defendant to execute ~~an~~ **the** agreement.
 4 **that allows the court to retain all or a part of the cash to pay**
 5 **publicly paid costs of representation and fines; costs; fees; and**
 6 **restitution that the court may order the defendant to pay if the**
 7 **defendant is convicted. Whether or not a defendant or a person**
 8 **making a deposit on behalf of the defendant enters into an**
 9 **agreement**, the defendant must ~~also~~ pay the fee required by
 10 subsection (d).

11 **(2) Require the defendant to execute:**

12 (A) a bail bond by depositing cash or securities with the clerk
 13 of the court in an amount not less than ten percent ~~(10%)~~ of
 14 the bail; and

15 (B) an agreement that allows the court to retain all or a part of
 16 the cash or securities to pay fines; costs; fees; and restitution
 17 that the court may order the defendant to pay if the defendant
 18 is convicted.

19 A portion of the deposit, not to exceed ten percent (10%) of the
 20 monetary value of the deposit or fifty dollars (\$50), whichever is
 21 the lesser amount, may be retained as an administrative fee. ~~The~~
 22 ~~clerk shall also retain from the deposit under this subdivision~~
 23 ~~fines; costs; fees; and restitution as ordered by the court; publicly~~
 24 ~~paid costs of representation that shall be disposed of in~~
 25 ~~accordance with subsection (b); and the fee required by~~
 26 ~~subsection (d).~~ In the event of the posting of a real estate bond,
 27 the bond shall be used only to insure the presence of the
 28 defendant at any stage of the legal proceedings, but shall not be
 29 foreclosed for the payment of fines, costs, fees, or restitution. The
 30 individual posting bail for the defendant or the defendant
 31 admitted to bail under this subdivision must be notified by the
 32 sheriff, court, or clerk that the defendant's deposit may be
 33 forfeited under section 7 of this chapter or retained under
 34 subsection (b).

35 ~~(3)~~ **(2)** Impose reasonable restrictions on the activities,
 36 movements, associations, and residence of the defendant during
 37 the period of release.

38 ~~(4)~~ **(3)** Except as provided in section 3.6 of this chapter, require
 39 the defendant to refrain from any direct or indirect contact with an
 40 individual and, if the defendant has been charged with an offense
 41 under IC 35-46-3, any animal belonging to the individual,
 42 including if the defendant has not been released from lawful



detention.

~~(5)~~ **(4)** Place the defendant under the reasonable supervision of a probation officer, pretrial services agency, or other appropriate public official. If the court places the defendant under the supervision of a probation officer or pretrial services agency, the court shall determine whether the defendant must pay the pretrial services fee under section 3.3 of this chapter.

~~(6)~~ **(5)** Release the defendant into the care of a qualified person or organization responsible for supervising the defendant and assisting the defendant in appearing in court. The supervisor shall maintain reasonable contact with the defendant in order to assist the defendant in making arrangements to appear in court and, where appropriate, shall accompany the defendant to court. The supervisor need not be financially responsible for the defendant.

~~(7)~~ **(6)** Release the defendant on personal recognizance unless:

(A) the state presents evidence relevant to a risk by the defendant:

(i) of nonappearance; or

(ii) to the physical safety of the public; and

(B) the court finds by a preponderance of the evidence that the risk exists.

~~(8)~~ **(7)** Require a defendant charged with an offense under IC 35-46-3 to refrain from owning, harboring, or training an animal.

~~(9)~~ **(8)** Impose any other reasonable restrictions designed to assure the defendant's presence in court or the physical safety of another person or the community.

(b) Within thirty (30) days after disposition of the charges against the defendant, the court that admitted the defendant to bail shall order the clerk to remit the amount of the deposit remaining under subsection ~~(a)(2)~~ **(a)(1)(A)** to the defendant. The portion of the deposit that is not remitted to the defendant shall be deposited by the clerk in the supplemental public defender services fund established under IC 33-40-3.

(c) For purposes of subsection (b), "disposition" occurs when the indictment or information is dismissed or the defendant is acquitted or convicted of the charges.

(d) Except as provided in subsection (e), the clerk of the court shall ~~(1)~~ collect a fee of five dollars (\$5) from each bond or deposit **required listed** under subsection (a)(1). ~~and~~

~~(2)~~ **retain a fee of five dollars (\$5) from each deposit under subsection (a)(2):**



The clerk of the court shall semiannually remit the fees collected under this subsection to the board of trustees of the Indiana public retirement system for deposit in the special death benefit fund. ~~The fee required by subdivision (2) is in addition to the administrative fee retained under subsection (a)(2):~~

(e) With the approval of the clerk of the court, the county sheriff may collect the bail posted under this section. The county sheriff shall remit the bail to the clerk of the court by the following business day and remit monthly the five dollar (\$5) special death benefit fee to the county auditor.

(f) When a court imposes a condition of bail described in subsection ~~(a)(4): (a)(3):~~

(1) the clerk of the court shall comply with IC 5-2-9; and

(2) the prosecuting attorney shall file a confidential form prescribed or approved by the division of state court administration with the clerk.

SECTION 10. IC 35-33-8-6.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: **Sec. 6.7. Recognizances for the appearance of prisoners in all cases and in all courts must be in writing, be taken with a person who meets the qualifications in IC 27-10-2-4, and be substantially in one (1) of the following forms:**

(1)

COURT BAIL BOND

STATE vs. _____;

Case: _____

I, _____ acknowledge myself bound to the State of Indiana in the amount of (Full Amount of Bail) Dollars; and hereby deposit a cash security of _____ Dollars.

If the defendant appears on Date: _____ Time: _____ as ordered by the court to answer the charge in this case, and appears from day to day after that date as may be required, and the depositor has agreed to allow the court to retain all fees, fines, costs, and restitution that may be adjudged against the defendant, then this bond is void, and the cash security shall be returned to the depositor minus the following:

- (1) a five dollar (\$5) special death benefit fee;
- (2) an administrative fee of not more than ten percent (10%) of the cash security up to a maximum of fifty dollars (\$50);
- (3) any fees, fines, or restitution ordered by the court; and
- (4) any necessary legal and attorney's fees incurred by the court on behalf of the defendant. If the depositor does not



1 agree to allow the court to retain all fees, fines, costs, and
 2 restitution that may be adjudged against the defendant, and
 3 any necessary legal and attorney's fees incurred by the court
 4 on behalf of the defendant, then the deposit minus the five
 5 dollar (\$5) special death benefit fee and the administrative fee
 6 of not more than ten percent (10%) of the cash security up to
 7 a maximum of fifty dollars (\$50) shall be retained and the
 8 remaining deposit shall be returned to the depositor of the
 9 bond at the conclusion of this case.

10 The depositor agrees to allow the court to retain any fees, fines,
 11 costs, and restitution from this bond. Depositor's Initials
 12 here: _____

13 The depositor does not agree to allow the court to retain any fees,
 14 fines, costs, and restitution from this bond except:

- 15 (1) a five dollar (\$5) special death benefit fee; and
- 16 (2) an administrative fee of not more than ten percent (10%)
 17 of the cash security up to a maximum of fifty dollars (\$50).

18 Depositor's Initials here: _____

19 If the defendant does not appear at the time fixed in this bond, or
 20 at any time after that date as ordered by the court, this bond shall
 21 be forfeited not later than ten (10) days after the failure to appear,
 22 if there was no justified reason for the failure to appear, and a
 23 warrant will be issued for the defendant's arrest. The clerk shall
 24 immediately notify the defendant and depositor of the forfeiture of
 25 this bond at the addresses given below, and the depositor of the
 26 bond shall immediately produce the defendant or the defendant
 27 shall immediately surrender to the court or jail. If the failure to
 28 appear continues without a justified reason for at least one
 29 hundred twenty (120) days, the court shall immediately enter
 30 judgment on the forfeiture of this bond for the full bail amount.
 31 The forfeiture and judgment shall be without pleadings and
 32 without change of judge or change of venue.

33 The defendant acknowledges that the defendant may not leave
 34 the State of Indiana without permission of the court and that the
 35 defendant's signature on this bond shall be held as a waiver of
 36 extradition proceedings in any state, territory, or country in which
 37 the defendant may be found and that any law enforcement officer
 38 may take the defendant into custody without further orders or
 39 proceedings in this jurisdiction or the jurisdiction in which the
 40 defendant is found.

41 Witness our hands and seals on this date _____
 42



1 _____
 2 **Defendant's Signature**

3 _____
 4 **Defendant's Address, Apartment or Lot Number City/State/Zip**
 5 **Code**

6 _____
 7 **Depositor's Signature**

8 _____
 9 **Depositor's Address, Apartment or Lot Number City/State/Zip**
 10 **Code**

11 _____
 12 **Witness to Defendant/Depositor Signature**

13 _____
 14 **Printed Name of Witness**

15 _____
 16 **Title of Witness**

17 _____
 18 **Badge Number of Witness\Correctional Officer**
 19 **(2)**

20 **COURT DEPOSIT BAIL BOND**

21 **STATE vs. _____; Case: _____**

22 **I, _____ acknowledge myself bound to the State of**
 23 **Indiana in the amount of (Full Amount of Bail) Dollars and hereby**
 24 **affix my name and signature upon this bond affirming under the**
 25 **penalty of perjury that I am a sufficient surety for this bond, a**
 26 **resident of the State of Indiana and a resident of the county where**
 27 **this bond is to be executed, and have unencumbered assets equal to**
 28 **the full bail amount of _____ and do hereby deposit a**
 29 **cash security of _____ Dollars.**

30 **If the defendant appears on Date: _____**
 31 **Time: _____ as ordered by the court to answer the charge**
 32 **in this case, and appears from day to day after that date as may be**
 33 **required, and the depositor has agreed to allow the court to retain**



all fees, fines, costs, and restitution that may be adjudged against the defendant, then this bond is void, and the cash security shall be returned to the depositor minus the following:

- (1) a five dollar (\$5) special death benefit fee;
- (2) an administrative fee of not more than ten percent (10%) of the cash security up to a maximum of fifty dollars (\$50);
- (3) any fees, fines, costs, or restitution ordered by the court; and
- (4) any necessary legal and attorney's fees incurred by the court on behalf of the defendant.

If the depositor does not agree to allow the court to retain all fees, fines, costs, and restitution that may be adjudged against the defendant, and any necessary legal and attorney's fees incurred by the court on behalf of the defendant, then the deposit minus the five dollar (\$5) special death benefit fee and the administrative fee of not more than ten percent (10%) of the cash security up to a maximum of fifty dollars (\$50) shall be retained and the remaining deposit shall be returned to the depositor of the bond at the conclusion of this case.

The depositor agrees to allow the court to retain any costs, fines, and fees from this bond. Depositor's Initials here: _____

The depositor does not agree to allow the court to retain any costs, fines, and fees from this bond except:

- (1) a five dollar (\$5) special death benefit fee; and
- (2) an administrative fee of not more than ten percent (10%) of the cash security up to a maximum of fifty dollars (\$50).

Depositor's Initials here: _____

If the defendant does not appear at the time fixed in this bond, or at any time thereafter ordered by the court, this bond shall be forfeited not later than ten (10) days after the failure to appear if there was no justified reason for the failure to appear and a warrant will be issued for the defendant's arrest. The clerk will immediately notify the defendant and depositor of the forfeiture of this bond at the addresses given below, and the guarantor of the bond shall immediately produce the defendant, or the defendant shall immediately surrender to the court or jail. If the failure to appear continues without a justified reason for one hundred twenty (120) days, the court shall immediately enter judgment on the forfeiture of this bond for the full bail amount and shall immediately issue an execution of judgment order to the sheriff against the properties owned by the depositor to be levied as other executions are levied. Such forfeiture and judgment shall be



1 without pleadings and without change of judge or change of venue.

2 The defendant acknowledges that the defendant may not leave
3 the State of Indiana without permission of the court, the
4 defendant's signature on this bond shall be held as a waiver of
5 extradition proceedings in any state, territory, or country in which
6 the defendant may be found, and any law enforcement officer may
7 take the defendant into custody without further orders or
8 proceedings in this jurisdiction or the jurisdiction in which the
9 defendant is found.

10 Witness our hands and seals on this date _____

11 _____
12 Defendant's Signature

13 _____
14 Defendant's Address, Apartment or Lot Number City/State/Zip
15 Code

16 _____
17 Depositor's Signature

18 _____
19 Depositor's Address, Apartment or Lot Number City/State/Zip
20 Code

21 _____
22 Witness to Defendant/Depositor Signature

23 _____
24 Printed Name of Witness

25 _____
26 Title of Witness

27 _____
28 Badge Number of Witness\Correctional Officer

29 SECTION 11. IC 35-33-8-7, AS AMENDED BY P.L.105-2010,
30 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
31 JULY 1, 2014]: Sec. 7. (a) If a defendant:

32 (1) was admitted to bail under section ~~3.2(a)(2)~~ **3.2(a)(1)** of this
33 chapter; and

34 (2) has failed to appear before the court as ordered;



the court shall issue a warrant for the defendant's arrest not later than ten (10) days after the date the defendant failed to appear and, except as provided in subsection (b), or section 8(b) of this chapter declare the bond forfeited not earlier than one hundred twenty (120) days after the defendant's failure to appear and issue a warrant for the defendant's arrest if the failure to appear was without a justified reason.

(b) If a defendant was admitted to bail by executing a surety bond under section 3.2(a)(1)(B) of this chapter:

(1) the court:

(A) may not declare the bond forfeited after ten (10) days; and

(B) shall order the bail agent and the surety to surrender the defendant to the court immediately;

(2) the clerk shall immediately send notice of the order under subdivision (1)(B) by mail or electronic mail to both:

(A) the bail agent; and

(B) the surety;

at each of their physical mailing address or electronic mail address indicated in the bonds; and

(3) if the defendant is arrested after the ten (10) day period or otherwise appears:

(A) the court shall order the surety released from the bond; and

(B) after the court issues an order under clause (A), the surety's original undertaking shall be reinstated if the surety agrees to reinstatement of the undertaking with the court.

This subsection may not be construed to prevent a court from revoking or resetting bail.

(c) If a defendant fails to appear as provided in a bond, the bail agent or surety must:

(1) produce the defendant; or

(2) prove within one hundred eighty (180) days:

(A) that the appearance of the defendant was prevented:

(i) by the defendant's illness or death;

(ii) because the defendant was at the scheduled time of appearance or currently is in the custody of the United States, a state, or a political subdivision of the United States, or has been deported from the United States;

(iii) because the required notice was not given; or

(iv) because authorities refused to extradite the defendant, and failed to inform the bail agent or surety of the



- 1 defendant's whereabouts so that the bail agent or surety
 2 may retrieve the defendant or pay the cost of extradition;
 3 and
 4 (B) the defendant's absence was not with the consent or
 5 connivance of the sureties.
- 6 (d) If the bail agent or surety does not comply with subsection
 7 (b)(1)(B) within one hundred eighty (180) days after the notice is
 8 sent as required under subsection (b)(2):
- 9 (1) a late surrender fee shall be assessed against the bail agent
 10 or surety in an amount equal to eighty percent (80%) of the
 11 face value of the bond; and
 12 (2) the bond shall be declared forfeited and judgment entered
 13 in an amount equal to twenty percent (20%) of the face value
 14 of the bond without pleadings and without change of judge or
 15 change of venue.
- 16 If the surety fails to pay, the late surrender fee and forfeiture shall
 17 be paid by the insurance commissioner as provided in subsection
 18 (f).
- 19 (e) The late surrender fee assessed against a bail agent or surety
 20 under subsection (d) shall be satisfied as provided in subsection (d)
 21 without an order from the court. The court may waive the late
 22 surrender fee or extend the period for payment beyond the
 23 statutorily permitted period, or both, if the following conditions
 24 are met:
- 25 (1) A written request or a request by electronic mail is filed
 26 with the court and the prosecuting attorney.
 27 (2) The surety or bail agent provides evidence satisfactory to
 28 the court that diligent efforts were made to locate the
 29 defendant.
- 30 (f) In the case of an insurer, if the late surrender fee or judgment
 31 is not paid, the clerk shall mail the notice to the insurance
 32 commissioner. The insurance commissioner shall:
- 33 (1) within ten (10) days of receipt of the notice, forward a copy
 34 by certified mail to the insurer;
 35 (2) forty-five (45) days after receipt of the notice from the
 36 clerk, if the insurance commissioner has not been notified by
 37 the clerk that the late surrender fee or judgment or both have
 38 been paid, pay the late surrender fee assessment, and any
 39 judgment of forfeiture from funds the insurer has on deposit
 40 with the department of insurance;
 41 (3) upon paying the assessment and judgment if any, from
 42 funds on deposit, immediately revoke the license of the insurer,



1 if the satisfaction causes the deposit remaining to be less than
 2 the amount required by this article; and

3 (4) within ten (10) days after revoking a license, notify the
 4 insurer and the insurer's agents and the clerk of each county
 5 in Indiana of the revocation and the insurer shall be prohibited
 6 from conducting a bail bond business in Indiana until the
 7 deposit has been replenished.

8 (g) The notice mailed by the clerk to the insurance commissioner
 9 under subsection (f) must include:

10 (1) the date on which the defendant originally failed to appear
 11 as provided in the bond;

12 (2) the amount of the bond;

13 (3) the dollar amount of the late surrender fee due; and

14 (4) the dollar amount of the judgment of forfeiture.

15 (h) Any surety on a bond may appeal to the court of appeals as
 16 in other civil cases without moving for a new trial, and on the
 17 appeal the evidence, if any, shall be reviewed.

18 (i) The late surrender fee collected under this section shall be
 19 distributed as follows:

20 (1) Fifty percent (50%) of the late surrender fees collected
 21 under this section shall be deposited in the police pension trust
 22 fund established under IC 36-8-10-12.

23 (2) Ten percent (10%) of the late surrender fees collected
 24 under this section shall be deposited in the county extradition
 25 and sheriff's assistance fund established under IC 35-33-14 in
 26 the county in which the bond was posted.

27 (3) Twenty percent (20%) of the late surrender fees collected
 28 under this section shall be retained by the court in which the
 29 bond was posted to do one (1) or more of the following:

30 (A) Defray the costs of operating the court.

31 (B) Defray the costs of operating diversion programs.

32 (4) Seven and one-half percent (7.5%) of the late surrender
 33 fees collected under this section shall be deposited in the
 34 supplemental public defender services fund established under
 35 IC 33-40-3 in the county in which the bond was posted.

36 (5) Seven and one-half percent (7.5%) of the late surrender
 37 fees collected under this section shall be deposited in the clerk
 38 of the court operating account to offset operating expenses.

39 (6) Five percent (5%) of the late surrender fees collected under
 40 this section shall be deposited in the county electronic
 41 monitoring fund established under IC 11-12-11 in the county
 42 in which the bond was posted to defray the costs of operating



electronic monitoring programs that involve indigent offenders.

~~(b)~~ **(j)** In a criminal case, if the court having jurisdiction over the criminal case receives written notice of a pending civil action or unsatisfied judgment against the criminal defendant arising out of the same transaction or occurrence forming the basis of the criminal case, funds deposited with the clerk of the court under section ~~3.2(a)(2)~~ **3.2(a)(1)** of this chapter may not be declared forfeited by the court, and the court shall order the deposited funds to be held by the clerk. If there is an entry of final judgment in favor of the plaintiff in the civil action, and if the deposit and the bond are subject to forfeiture, the criminal court shall order payment of all or any part of the deposit to the plaintiff in the action, as is necessary to satisfy the judgment. The court shall then order the remainder of the deposit, if any, and the bond forfeited.

~~(c)~~ **(k)** Any proceedings concerning ~~the a bond, or its the~~ **of a bond, a judgment or on a forfeiture**, execution of a judgment, **or a stay of proceedings** shall be held in the court that admitted the defendant to bail.

~~(d)~~ **(l)** After a bond has been forfeited under subsection (a) or ~~(b)~~, **(d)**, the clerk shall mail notice of forfeiture to the defendant. ~~In addition, unless the court finds that there was justification for the defendant's failure to appear,~~ The court shall immediately:

(1) enter judgment, without pleadings and without change of judge or change of venue, ~~against the defendant for the amount of the bail bond, and one hundred twenty (120) days after the date the~~ **notice was mailed; and**

(2) issue an execution of judgment order to the sheriff against the properties owned by the depositor to be levied as other executions are levied against the defendant for the amount of the bail bond.

The clerk shall record the judgment.

~~(e)~~ **(m)** If a bond is forfeited and the court has entered a judgment under subsection ~~(d)~~, **(l)**, the clerk shall transfer to the state common school fund:

(1) any amount remaining on deposit with the court (less the fees retained by the clerk); and

(2) any amount collected in satisfaction of the judgment.

~~(f)~~ **(n)** The clerk shall return a deposit, less the administrative fee, made under section ~~3.2(a)(2)~~ **3.2(a)(1)** of this chapter to the defendant, if the defendant appeared at trial and the other critical stages of the legal proceedings.



(o) After July 31, 2014, each surety and bail agent shall maintain an electronic mail address for purposes of conducting business under this section.

SECTION 12. IC 35-33-8-8 IS REPEALED [EFFECTIVE JULY 1, 2014]. Sec. 8: (a) If a defendant was admitted to bail under section 3.2(a) of this chapter and the defendant has knowingly and intentionally failed to appear before the court as ordered; the court:

(1) shall issue a warrant for the defendant's arrest;

(2) may not release the defendant on personal recognizance; and

(3) may not set bail for the rearrest of the defendant on the warrant at an amount that is less than the greater of:

(A) the amount of the original bail; or

(B) two thousand five hundred dollars (\$2,500);

in the form of a bond issued by an entity defined in IC 27-10-1-7 or the full amount of the bond in cash.

(b) In a criminal case, if the court having jurisdiction over the criminal case receives written notice of a pending civil action or unsatisfied judgment against the criminal defendant arising out of the same transaction or occurrence forming the basis of the criminal case; funds deposited with the clerk of the court under section 3.2(a)(2) of this chapter may not be declared forfeited by the court; and the court shall order the deposited funds to be held by the clerk. If there is an entry of final judgment in favor of the plaintiff in the civil action; and if the deposit is subject to forfeiture; the criminal court shall order payment of all or any part of the deposit to the plaintiff in the action; as is necessary to satisfy the judgment. The court shall then order the remainder of the deposit; if any; forfeited.

SECTION 13. IC 35-33-8-12 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 12. A sign shall be posted in a conspicuous place in any area where bail bonds are executed and accepted that contains the following information:

(1) The depositors for bail bonds (under section 3.2(a)(1) of this chapter) are undertaking full responsibility for payment of the full bail amount if there is a failure of the defendant to appear, a forfeiture, or a judgment.

(2) The depositor is required to sign a sufficient surety affidavit under the penalty of perjury stating the depositor:

(A) has assets equal to the full bail amount; and

(B) is a resident of:

(i) Indiana; and

(ii) the county where the bond is to be executed.



(3) The depositor may agree to allow the court to retain all or a part of the deposit to pay publicly paid costs of representation and fines, costs, fees, and restitution that the court may order the defendant to pay if the defendant is convicted.

(4) The clerk shall:

(A) retain or require a five dollar (\$5) fee from all bail bonds posted; and

(B) retain a part of the deposit, not to exceed ten percent (10%) of the monetary value of the deposit or fifty dollars (\$50), whichever is the lesser amount, as an administrative fee.

SECTION 14. IC 35-33-8.5-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 4. (a) One (1) surety on every such recognizance must be a resident freeholder of the county in which the prosecution is pending, and the surety or sureties must be worth at least double the sum to be secured and must have property in this state liable to execution equal to the sum to be secured, and when two (2) or more sureties are offered to the same recognizance, they must have in the aggregate the qualifications prescribed in this section. Whenever by the laws of this state a surety company is authorized to become surety on recognizance bonds, such surety company may be accepted as sufficient surety on any such bond.

(b) The recognizance shall be in form substantially as provided in ~~IC 27-10-2-10~~; **IC 35-33-8-6.7**, conditioned for judgment on ten (10) days notice to the surety. No pleadings shall be necessary and no change of judge or change of venue shall be granted. The obligor may except to the ruling of the court and appeal to the court of appeals as in civil cases without moving for a new trial.

SECTION 15. IC 35-33-8.5-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 5. The recognizance as provided for in ~~IC 27-10-2-10~~ **IC 35-33-8-6.7** shall be continuing, and the defendant shall not be required to renew it during pendency of the proceedings, unless ordered to do so by the court for cause shown. But, at each term of the court, after such recognizance is taken, the court shall inquire into the sufficiency of the sureties.

SECTION 16. IC 35-33-14-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 5. The fund consists of the portion of late surrender fees deposited in the fund under ~~IC 27-10-2-12(i)~~; **IC 35-33-8-7(i)(2)**.

